

THE CAPE DECLARATION

ON DECRIMINALISING POVERTY AND STATUS

We, the participants of the convening of the [Campaign to Decriminalise Poverty and Status](#)¹, held in Stellenbosch, South Africa between 27 and 29 September 2022 gathered to discuss strategies to address the criminalisation of poverty, status and activism around the world and its impact on the poor and most marginalised. This convening brought together 113 participants from 28 countries who are advocates, activists and experts from international, regional, and national non-governmental organisations, National Human Rights Institutions (NHRIs), legal aid organisations, bar associations, the judiciary, and academia.

The Cape Declaration on Decriminalising Poverty and Status was adopted by consensus with the request that it be publicised widely to stakeholders such as prosecutors, law enforcement, the judiciary, lawyers and legal aid providers, people affected and rights holders, and community leaders, and forwarded to national governments, inter-governmental bodies including the United Nations (UN) Commission on Crime Prevention and Criminal Justice, the UN Commission on Narcotic Drugs, the UN Human Rights Council, the UN High-level Political Forum on Sustainable Development Goals, the Commonwealth of Nations, Organisation Internationale de la Francophonie and regional human rights mechanisms, including the African Commission on Human and Peoples' Rights, the Council of Europe, and the Inter-American Commission on Human Rights.

We hereby express deep concern, call attention to, and request urgent, comprehensive, and global action regarding the following:

1. That all human beings are born free and equal in dignity and rights and are entitled to these rights and freedoms without any discrimination or distinction. We note with grave concern the growing inequality worldwide, and the criminalisation of poverty and marginalisation. This is both a moral outrage and an egregious violation of national and international human rights laws and standards and leads to the further political, educational, employment, and social exclusion of those who are already among the most marginalised members of society.
2. States routinely deploy law enforcement, courts, and prisons against the poor and most marginalised for reasons that have little to do with ensuring safety or delivering justice, but rather to protect the boundaries of wealth, privilege, power, and status. Around the world, criminal laws and law enforcement policies and practices continue to reflect brutal colonial legacies, disproportionately affecting marginalised and discriminated populations. The legacies of colonialism, trafficking of enslaved peoples, caste and descent discrimination, and feminisation of poverty as well as patriarchal systems of oppression against women have resulted in the over-surveillance, over-policing, over-incarceration, and systemic degradation of the dignity and rights of people belonging to discriminated groups. Laws criminalising vagrancy, loitering, begging, sleeping and eating in public, or being idle and disorderly are

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routinely deployed against people living in poverty, persons experiencing homelessness, people from marginalised racial, ethnic, and caste groups, indigenous peoples and tribal groups, women, children, religious groups, persons with disabilities, persons discriminated against due to their health status, persons who use drugs, older persons, members of the LGBTQIA+ community, sex workers, refugees and migrants. The application of this state power manifests in fundamental human rights violations, including arbitrary and discriminatory arrest, the use of lethal force, torture, unlawful and excessive imprisonment, disproportionate sentencing, and inhumane conditions of detention, among others.

3. These unjust outcomes also undermine progress across the [2030 Agenda on Sustainable Development](#), including on poverty eradication (Goal 1), gender equality (Goal 5), decent work (Goal 8), reducing inequalities (Goal 10), the enjoyment of adequate housing for all (Goal 11) and achieving more peaceful, just, and inclusive societies (Goal 16). We recall the pledge to leave no one behind as a guide to efforts to provide meaningful access to justice for all, especially for populations that face multiple and intersecting barriers, and recognise that reducing pre-trial detention is a key indicator of progress towards access to justice under Goal 16.
4. Laws that criminalise poverty and status also have a negative impact on the rights to freedom of expression, peaceful assembly, association, and public participation. More generally, states are increasingly using criminal laws to quell dissent, target human rights defenders and community and movement leaders, and control, ban and disperse peaceful protests. Sedition laws, blasphemy laws, terrorism laws, laws addressing misinformation, as well as laws criminalising organisers and participants of peaceful protests are often vaguely formulated leading to arbitrary arrests, detention, and prosecution, and violations of human rights.
5. States' overreliance on criminal law to protect national security, public health, or other goals has often resulted in grave human rights violations including torture, enforced disappearances, extrajudicial executions, arbitrary detention, forced evictions, and violations of the rights to a life in dignity, to adequate housing, food and the highest attainable physical and mental health. The so-called "war on terror," "war on drugs," and the securitized responses to the COVID-19 pandemic are three of the most egregious instances where the overreliance on criminal punishment have fuelled human rights abuses.
6. The use of criminal punishment to achieve public health objectives has proven to be ineffective and discriminatory. Extraordinary measures and emergency laws introduced in the context of COVID-19 such as lockdowns and curfews, as well as other regulations, many of which remain in force, have disproportionately impacted poor and marginalised members of society, limiting their rights and ability to maintain their livelihoods and provide for their families. The enforcement of such measures has, in many countries, included violence and brutality on the side of law enforcement officers, in some cases resulting in injuries, fatalities, and deprivation of liberty. The pandemic has further exposed pervasive and persistent inequalities as well as racism, gender discrimination and disability discrimination, which manifests in unjust and discriminatory law enforcement practices.
7. The human rights violations caused by punitive approaches to drugs, under the international system of drug control, is borne by poor and marginalised communities. Arbitrary detention, compulsory drug treatment (often not evidence-based and absent respect for people's rights and dignity), lack of legal aid, the death penalty, and life imprisonment are impacts of criminalising drug use.
8. Criminalisation of poverty, status and activism is a key driver of rising numbers of people held in jails and prisons around the world with a global rise in the prison population of 24% since 2000. Fines, fees, and money bail or use of personal guarantors create a two-tier system of justice based on a person's ability to pay and results in the detention of persons living in poverty and/or who are marginalised, which deepens inequities and perpetuates cycles of poverty. Disparities in sentencing are well-evidenced, including with extreme sentences such as the death penalty and life imprisonment which disproportionately apply to people from marginalised groups.
9. The inability of poor and marginalised persons to access effective legal aid services is both a result of, and a cause of disadvantage and poverty. Those who cannot afford to hire a lawyer often do not have access to meaningful legal representation when suspected, accused of, or detained for a criminal offence. In many jurisdictions, those charged with petty or minor offences will not be provided access to legal representation at the state's expense, and many governments arbitrarily restrict access to legal representation on national security or other related grounds.

10. Laws criminalising poverty and status as well as news, reports, and other public-facing content about crime and the justice system are often framed through language that embeds stigma, discrimination, and intolerance. Misleading narratives on law and order are also used to justify repressive and discriminatory laws, policies, and practices, that do not in fact make communities safer but perpetuate dangerous stereotypes, reinforce discrimination, and cause harm to individuals and communities.

Recommendations: A way forward

The Cape Declaration calls on States and international criminal justice mechanisms, in conjunction with the international community, civil society and all other relevant stakeholders to take the following actions to address this crisis:

1. States should stop the criminalisation of people based on poverty, status, and activism by adopting human rights-based reforms. We recommend they reinvest in communities and divert resources from law enforcement, prosecution, and punishment to measures that address the root causes of contact with the justice system including efforts to alleviate poverty, to advance the rights to work, health, education, housing, culture, social security, food, water and sanitation, and family, and to address mental health issues and substance use.
2. States should review and repeal all laws, practices, and procedures, including laws from the colonial-era, that criminalise poverty and status, such as those that criminalise homelessness, debt, and life-sustaining activities in public spaces, all aspects of sex work, and morality. States should further ensure that laws criminalising conduct in broad, vague, and ambiguous terms are repealed or amended. Mechanisms should be established for the identification of, and immediately release of people who are arrested for, suspected of, and convicted for these offences, dropping all the charges and ensuring the expungement of criminal records in such cases. While waiting for legislative reforms to be completed, states should introduce a moratorium on policing, prosecuting, and sentencing people under such laws.
3. States should examine and adopt action-oriented plans to address all forms of discrimination in criminal justice systems. This includes discriminatory practices of law enforcement agencies, the judiciary, jails, prison, probation, and parole authorities, conducting prompt, impartial and effective investigations, and ensuring effective accountability and redress for victims of any human rights violations committed in the context of discrimination.
4. States should eliminate wealth-based detention because of inability to pay bail, fees, fines, or other monetary or surety-related non-custodial options which are inaccessible for the poor. Non-payment of fines should never lead to prison sentences being imposed and money bail and other mechanisms which are less accessible to people in poverty and could thus lead to discrimination based on social and economic status should be eliminated or reformed.
5. States should integrate an intersectional, rights-based and public health approach to all reform efforts aimed at tackling the criminalisation of poverty and status that considers multiple and compounding forms of discrimination based on race, ethnicity, caste, class, age, gender, disability, economic, social, health or other status across social, political, and economic spheres.
6. States should ensure that all reform efforts recognise the feminisation of poverty and tackle laws, policies and procedures that target or disproportionately impact women who are perceived to be violating entrenched patriarchal norms. Gendered harms from criminalisation of women and girls based on their gender and status must be identified and addressed.
7. For offences that are not decriminalised, states should increase the availability of and use of diversion, real alternatives to arrest and detention in line with the [United Nations Standard Minimum Rules for Non-Custodial Measures \(Tokyo Rules\)](#) and [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(Bangkok Rules\)](#) and principles of legality, necessity, and proportionality. These include but are not limited to diversion, mediation, and the declaration of certain offences as non-arrestable offences.

8. In line with the [UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#), states should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence and cannot afford a lawyer, is entitled to legal aid at all stages of the criminal justice process. To expand access to legal aid, states should engage in and fund partnerships with nongovernmental and other organizations, including paralegal organisations.
9. The rights to freedom of expression, peaceful assembly, and association are crucial to ensure that every person can fully and effectively participate in the conduct of public affairs. They also safeguard actions aimed at promoting equal access by all to economic, social and cultural rights. States should repeal laws that criminalise activism and dissent, and all other laws that restrict the enjoyment of the rights to freedom of expression, peaceful assembly and association.
10. Law enforcement officials should be trained, supervised and equipped to favour the presumption of the exercise of rights, rather than using tactics that close civic space, such as requiring prior permission to assemble, and using force and dispersal tactics against peaceful protestors.

The Cape Declaration calls on States, the international community, civil society, and all other relevant stakeholders, to support the above mandate, by taking the following immediate actions:

11. The international community should convene an intergovernmental meeting of experts with representation of all relevant stakeholders, civil society, and people with lived experiences, to study ways and means of addressing the global crisis of criminalisation of poverty, status, and activism, as well as the possibility of developing a declaration of basic principles and guidelines, taking into account the Cape Declaration, international and regional human rights law and standards, instruments and resolutions, and recommendations and concluding observations by international and regional human rights mechanisms including their Special Procedures.
12. In addressing the criminalisation of poverty, status and activism, the international community, states and all other relevant stakeholders should centre the leadership of directly impacted people who have first-hand experience of criminalisation and incarceration.
13. In addition, they should also recognise, fund, and empower civil society's role in governance, decision-making and monitoring of measures to respond to the criminalisation of poverty, status, and activism. Impacted communities and civil society must be genuinely and effectively consulted by policymakers including with a view to promoting the preferred language that communities use to identify themselves.
14. The international community, states and civil society should engage and sensitize relevant stakeholders including policymakers, legislators, the judiciary, lawyers, legal aid providers, prosecutors, law enforcement agencies, oversight and monitoring mechanisms, and prison and probation authorities to the criminalisation of poverty and status. To promote public awareness, shift perceptions, and eliminate stigma, states should review language in existing laws and put in place effective policies to combat all language stereotypes, particularly those that are gender-based, disability-based, and racist. News organisations and other public content-producing entities should also be encouraged take action to assess and revise policies around language and framing to prevent harmful narratives.
15. Using existing indicators and data collection tools such as those under the Sustainable Development Goals, states should mandate all relevant actors and bodies to collect and make all data publicly available. Such data should be disaggregated by all relevant demographics and in raw format and be made publicly available upon request without justification or the requirement of a formal request.

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